IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 686/2004
(Ram Lal Vs. Smt. Bhanwari Devi)

Date of Order : 17/11/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Niranjan Singh for the petitioner.
Mr. H.S.Srimalee for the non-petitioner.

BY THE COURT:-

The order dated 5.8.2004 passed by Additional Sessions Judge No.1, Bikaner (for short 'the revisional court' hereinafter) has been challenged by the petitioner by way of instant criminal misc. petition under Section 482 Cr.P.C.

Heard learned counsel for the parties. Perused the order passed by the revisional court.

By order dated 5.8.2004, the revision petition filed by the petitioner against the order dated 12.11.2003 passed by Chief Judicial Magistrate, Bikaner (for short 'the trial court' hereinafter) was dismissed. By order dated 12.11.2003, the trial court, on an application filed by the non-petitioner, directed the present petitioner, Shivratan and Shambhu Dayal, to pay Rs.

500/- each as monthly allowance of interim maintenance to the non-petitioner. Thus, a sum of Rs. 500/- per month was directed to be paid by the petitioner to the present non-petitioner as monthly allowance of interim maintenance.

The non-petitioner Bhanwari Devi claims to be mother of the present petitioner, Shivratan and Shambhu Dayal.

Learned counsel for the petitioner submits that the petitioner is stepson and Smt. Bhanwari Devi is not his real mother and therefore, he is not liable to pay the maintenance. Learned counsel has relied on a decision of Hon'ble Supreme Court in Kirtikant D. Vadodaria Vs. State of Gujarat and another 1996 SCC (Cri) 762 wherein Hon'ble Supreme Court held that when stepmother is claiming maintenance from her stepson, the expression mother is envisaged under Section 125 (1) means only real or natural mother and does not include stepmother. Stepmother is a distinct and separate entity and cannot be equated with the natural mother who has given birth to the child. It was further held that an adoptive mother can be included in the expression mother, however, having regard to the purpose behind the benevolent provisions of S. 125 held that a childless stepmother is entitled to claim maintenance from her stepson provided she is a widow or her husband, if living, is also incapable of maintaining her.

The non-petitioner appeared before the trial court and made a statement, wherein she categorically stated that she gave birth to all the three persons and are her son who have been grown-up and maintained by her. A question was put to her, as to whether she gave birth to the petitioner, no answer was given. But at any rate, in her examination-in-chief she stated that she gave birth to all the three persons which includes the petitioner. By the order impugned, only monthly allowance of interim maintenance has been granted without there being any evidence at that stage. In the circumstances, therefore, it cannot be concluded at this stage that the petitioner is a stepson and non-petitioner is stepmother. These are the questions to be decided by evidence by the trial court at the time of deciding the main application under Section 125 Cr.P.C. In the circumstances, therefore, no case for interference in the inherent jurisdiction is made out.

The criminal misc. petition is therefore, dismissed. However, the trial court is directed to decide the main application filed by the non-petitioner utmost expeditiously preferably within a period of six months from the date of filing of certified copy of this order. Stay petition also stands dismissed.

(H.R.PANWAR),J.

rp